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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re:)
)
Amendment of 47 C.F.R. §73.606(b),) Reply Reference No.: 1800D5
Television Table of Allotments)
(Big Bear Lake, California and)
Yucaipa, California))

To: Chief, Policy and Rules Division
Mass Media Bureau

PETITION FOR RECONSIDERATION

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Summary

KBBL, Inc. ("Petitioner") seeks reconsideration of the Commission's denial of its Petition for Rule Making to reallocate UHF Channel 59 from Big Bear Lake, California to Yucaipa, California. Petitioner sought reallocation because it is simply impossible to construct the facilities as authorized in KBBL, Inc.'s construction permit, and the Commission has previously denied Petitioner's applications to modify the technical methods of providing service as authorized.

Petitioner seeks reconsideration because the Commission's finding that its 1987 "freeze" order prohibits it from making the requested reallocation is inconsistent with the express language of the freeze order, which states that the freeze will not apply to proposals which are mutually exclusive with pre-freeze TV applications, which is the case here.

Additionally, Petitioner seeks reconsideration because even if the freeze order did apply and a waiver was in order, Petitioner demonstrates herein that the proposed reallocation will have no bearing on the Commission's options for the provision of ATV service in Los Angeles. The Commission indicated that it would need this information to consider such a waiver request.

Finally, the Commission stated that if a waiver was justified, it would question whether the proposal is merely for an additional service to the Riverside-San Bernardino Urbanized Area, or for a new service to Yucaipa. Petitioner respectfully submits that such an analysis is premature at this time in light of the arguments raised above. However, should the Commission determine after reconsideration that the freeze/ATV concerns mentioned above still warrant the "first service" analysis, Petitioner will supply it in response to a Notice of Proposed Rule Making which is the customary procedural practice.

The manifest public interest considerations raised in this matter, as more fully outlined in previous related proceedings, justify grant of Petitioner's proposal to provide service where it is currently impossible to do so as authorized.

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PETITION FOR RECONSIDERATION

KBBL, Inc. ("Petitioner"), by counsel and pursuant to Section 1.429 of the Commission's rules, hereby petitions for reconsideration of the Commission's denial of its Petition for Rule Making, filed September 14, 1992, to reallocate Channel 59 (UHF Station KBBL) from Big Bear lake, California to Yucaipa, California, and to amend Section 73.606(b) of the Commission's rules, the Television Table of Allotments, as follows:

<u>City</u>	<u>Present</u>	<u>Proposed</u>
Big Bear Lake, California	59+	None
Yucaipa, California	None	59+

Petitioner also requested that the construction permit for Station KBBL be modified to specify Yucaipa, California, as its community of license. Petitioner indicated that it would apply to

amend its construction permit for Channel 59 to specify facilities providing the required service to Yucaipa, if allotted.

I. Background.

Petitioner holds an FCC construction permit to build and operate a new television station (KBBL) on Channel 59, Big Bear Lake, California. The community of license, Big Bear lake, lies within a deep, narrow valley that is surrounded by mountains rising between 2,000 and 4,000 feet above the valley floor. The valley is encompassed by the San Bernardino National Forest, which lies within the jurisdiction of the U.S. Forest Service.

Petitioner sought reallocation due to the onerous and insurmountable obstacles which have precluded it from constructing a full power station at Big Bear Lake, which included: (1) the impossibility of providing both line of sight service to Big Bear Lake and coverage to the large service area containing over a million people outside of the Big Bear Valley, as authorized, due to geographical limitations; (2) refusal of the U.S. Forest Service to grant Petitioner permission to use a site on Forest Service land, which thereby precluded construction as authorized; (3) the Commission's denial of Petitioner's application for an on-channel television booster at Bertha Peak, which would have provided a city-grade signal to Big Bear Lake and city grade coverage of the entire valley floor; and (4) the Commission's denial of

Petitioner's modification application to change KBBL's main transmitter site and waiver request of Commission rules regarding transmitter location and principal community coverage.^{1/}

Petitioner appealed those Commission actions, which appeal has been held in abeyance pending resolution of the petition for rule making, which in turn would render the appeal moot, if granted.

II. KBBL, Inc.'s Petition.

Petitioner set forth in its petition for rule making the manifest public interest reasons why the amendment of the television table of allotments and consequent modification of KBBL's construction permit are in the public interest and would be consistent with the Commission's mandate under 47 U.S.C. §307(b) to provide for a fair, efficient and equitable distribution of radio facilities to the States and communities. Petitioner argued that reallocation of Channel 59 is also consistent with the Commission's rules and policies in this regard.

A. KBBL, Inc.'s Proposal.

Petitioner argued that allocation of Channel 59 to

^{1/} In the interest of brevity, the voluminous factual and procedural history of the events which have faced petitioner will not be reiterated herein. They are outlined in the original petition. In addition, on March 1, 1990, petitioner submitted a comprehensive response to a Commission inquiry which addressed engineering and economic aspects of petitioner's situation. See PZ Entertainment Partnership, L.P., (Memorandum Opinion and Order), 6 FCC Rcd. 1240, paras. 7, 8 (1991). That response is hereby incorporated by reference.

Yucaipa, California satisfied the requirements of 47 CFR § 1.420(i) since it would be mutually exclusive with Channel 59 at Big Bear Lake as currently authorized. The community of Yucaipa does not meet co-channel separation requirements when compared to the currently authorized site at Big Bear Lake.^{2/}

Petitioner argued that the second criterion regarding the preferential arrangement of allotments, the provision of at least one local television station in each community, was also satisfied. See Amendment of Section 3.606 of the Commission's Rules and Regulations, etc.; Sixth Report and Order, 41 FCC 148, 167 (1952). The first television allotment priority, to provide at least one television service to all parts of the United States, is already met here and thus inapplicable, since Big Bear Lake and Yucaipa are within the predicted Grade B contours at least 13 stations according to the 1992 Television and Cable Factbook, Volume 60.

Yucaipa has no authorized first local service, and neither does Big Bear Lake. Petitioner argued that since KBBL is only permitted at this time and is not a licensed, operating station, it does not fall with the prohibition on removal of an

^{2/} The reference coordinates for Yucaipa are N 34° 2', W 117° 2'. The coordinates for KBBL's currently authorized facility are 34° 12' 36" N, 116° 51' 00" W. Petitioner attached an engineering statement to its petition showing that there are several multi-user antenna sites in the Yucaipa area from which Petitioner could presumably operate if the channel were reallocated. Operation from these sites would provide both line of sight and city grade coverage to Yucaipa, and would be fully spaced.

existing service representing a community's sole local transmission service. Nevertheless, Petitioner proposed to provide service to both communities in any event, serving Big Bear Lake by applying for and constructing a low power facility since Petitioner cannot build the currently-authorized station. The Commission has already noted that Big Bear Lake could possibly be served in the future by a low power TV station. See PZ Entertainment Partnership, L.P., 7 FCC Rcd. 2696 (1992). Thus, Petitioner demonstrated that reallocation of Channel 59 to Yucaipa, California satisfies the television allotment policies and meets the factors referenced in Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License (Report and Order), 4 FCC Rcd. 4870, 66 RR 2d 877 (1989), pet. for recon. granted in part, 5 FCC Rcd. 7094, 68 RR 2d 644 (1990).

Petitioner argued further that the petition was not affected by the television "freeze." See Advanced Television Systems and Their Impact on the Existing Television Broadcast Service (Docket 87-268), Mimeo 4074, released July 17, 1987. Although the proposed service is within the minimum co-channel separation distance of a "frozen" area (Los Angeles), as is Big Bear Lake, Petitioner argued that applications filed now that are mutually exclusive with applications filed before the freeze are exempt from the freeze. The current petition proposes a service mutually exclusive with the authorized station, which was allotted in 1984, well before imposition of the freeze.

In any event, Petitioner argued that the compelling public interest reasons presented would warrant a waiver of the freeze restriction if deemed to apply. The freeze order (at ¶2) expressly entertained waiver requests for compelling reasons.

B. The Commission's Denial.

On December 9, 1992, the Commission denied the petition for rule making. The Commission articulated essentially three reasons for doing so.

First, the Commission stated that the petition was not acceptable for consideration at this time due to the freeze order. The Commission stated that it has previously found the constraints of the freeze order applicable to changes in community pursuant to Section 1.420(i) of the Commission's rules, citing Albion, Lincoln and Columbus, Nebraska, 6 FCC Rcd. 6038 (1991).

Second, the Commission stated that the petition did not address any impact reallocation of Channel 59 from Big Bear Lake to Yucaipa may have on ATV allotment options for Los Angeles, California. Thus, any movement of an allotment closer to the Los Angeles freeze area, which Petitioner minimally proposed (11 km), would impede the Commission's efforts to improve service to the public. Thus, a waiver of the freeze restriction would not be in the public interest.

Finally, the Commission stated that even if a waiver was justified, Yucaipa is within the Riverside-San Bernardino Urbanized Area, as defined by the United States Census. Accordingly, the Commission would question whether Yucaipa is deserving of a first local television service preference, or whether the proposal should be viewed as requesting an additional local television transmission service to the urbanized area, citing Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License, 5 FCC Rcd. 7094, 7096 (1990), and cases cited therein.

III. Discussion.

Each of the Commission's three points are addressed in turn below.

First, Petitioner argued that under the express language of Section 1.420(i) of the Commission's rules, the Commission may modify the license or permit of a television broadcast station in the course of a rule making proceeding to amend the Television Table of Allotments (§73.606(b)) to specify a new community of license where the amended allotment would be mutually exclusive with the licensee's or permittee's present assignment. Petitioner's current authorization is mutually exclusive with the proposed allotment at Yucaipa because Yucaipa does not meet co-channel separation requirements when compared to the authorized

site at Big Bear Lake. The Commission replied that under Albion, Lincoln and Columbus, Nebraska, 6 FCC Rcd. 6038 (1991), for example, it has in the past found the constraints of the freeze order applicable to changes in community pursuant to Section 1.420(i). However in Albion, the subject Channel 8 could be allotted to Lincoln, Nebraska in avoidance of the Lincoln freeze area. See Albion, 6 FCC Rcd. at 6039, para. 9. Here, both Big Bear Lake and Yucaipa are already in the Los Angeles freeze area and the station at Big Bear Lake is already authorized. Moreover, the freeze order itself states that the freeze "will not apply to changes requested by existing stations ... Specifically, we will accept and process applications filed after the freeze that are mutually exclusive with applications filed before the freeze." See Advanced Television Systems and Their Impact on the Existing Television Broadcast Service, (Docket 87-268), Mimeo 4074, released July 17, 1987, at p. 2. Channel 59 was allotted in 1984 and Petitioner's predecessor's application for it was granted in 1985, well before imposition of the freeze. See PZ Entertainment Partnership, L.P., 68 RR 2d 1466, 1467 (1991). Thus, the freeze order is inapplicable to KBBL. This recognition of inapplicability is consistent with the Commission's reluctance to create "new" allotments, which Petitioner's proposal does not. Petitioner has proposed a substituted community.

Second, assuming the freeze order did apply and a waiver request were to be entertained, the Commission desired information

concerning how the petition would impact ATV options in Los Angeles. The reallocation of Channel 59 from Big Bear Lake to Yucaipa would have no effect on the proposed ATV allocations for Los Angeles. In MM Docket 87-268, the Commission has developed a proposed ATV Table of Allotments, which specifies the use of Channel 60, adjacent to the Channel 59 under consideration, for ATV service in Los Angeles. Paragraph 28 of the Second Further Notice of Proposed Rule Making, 7 FCC Rcd. 5376 (1992), states the Commission's goal of avoiding adjacent-channel allotments located between 5 and 55 miles of each other.^{3/} The Commission was not always able to meet this target; in fact, paragraph 54 of the Second Further Notice admits that 228 of the 1,716 proposed ATV allocations do not meet the desired adjacent-channel mileage separation. However, the proposed reallocation of Channel 59 to Yucaipa does meet the Commission's ATV mileage separation for adjacent channels.

It is expected that all of the Los Angeles ATV facilities will be constructed at Mt. Wilson. Assuming the Channel 2 facility there to be an available site, the proposed reallocation of Channel 59 from Big Bear Lake, at 65.2 miles away, to Yucaipa, at 61.1 miles away, continues to ensure that Channel 59 will be fully

^{3/} The stated assumptions of the Commission are that (a) adjacent channel operations within 5 miles of each other would radiate signals of sufficiently similar strength that ATV receivers will be able to differentiate between the two, and (b) adjacent channel operations more than 55 miles from each other are so far apart as not to prevent the reception of one another.

compatible with the Commission's goals for implementation of Advanced Television Service.

Finally, the Commission stated that even if a waiver was justified, it would question whether the proposal should be viewed as requesting an additional local service to an urbanized area since Yucaipa is within the Riverside-San Bernardino Urbanized Area as defined by the U.S. Census. Petitioner respectfully submits that given the discussion above, such an analysis is premature at this time. Should the Commission agree on reconsideration that the freeze/ATV concerns addressed above still warrant the first service/additional service analysis, Petitioner will supply that analysis in response to a Notice of Proposed Rule Making which is the customary procedural practice. Cf. Amendment of Section 73.202(b), Table of Allotments, FM Broadcast stations (Elizabeth City, North Carolina and Chesapeake, Virginia), 7 FCC Rcd. 6815 (1992).

IV. Petition for Reconsideration.

Inasmuch as the Commission has expressed the desirability of the additional information provided herein, the public interest warrants reconsideration of its ruling on the petition for rule making under Section 1.429. Additionally, the insurmountable obstacles which have faced Petitioner, outlined previously, render reconsideration of the petition to be in the public interest since

Petitioner is striving to provide service to the public where it is currently impossible to do so.

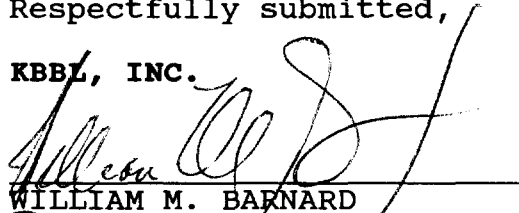
V. Conclusion.

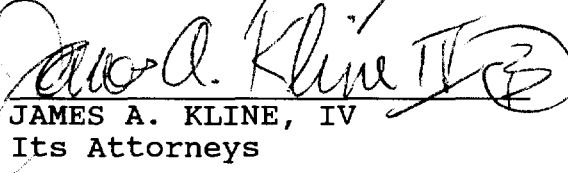
Wherefore, for the foregoing reasons, Petitioner KBBL, Inc. respectfully requests that the Commission reconsider denial of its Petition for Rule Making, and amend the Television Table of Allotments and reallocate UHF Channel 59 from Big Bear Lake, California to Yucaipa, California. Additionally, Petitioner requests that the Commission modify its construction permit to specify Yucaipa, California as its community of license. Petitioner will apply to amend its construction permit for Channel 59 to specify facilities providing the required service to Yucaipa, California, if allotted.

Respectfully submitted,

KBBL, INC.

By:


WILLIAM M. BARNARD


JAMES A. KLINE, IV
Its Attorneys

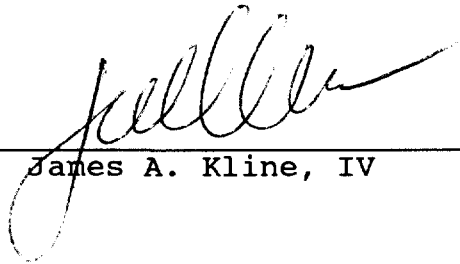
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January 8, 1992
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Certificate of Service

I, James A. Kline, IV, an attorney with the law firm of McFadden, Evans & Sill, do hereby certify that on this 8th day of January, 1993, a true and correct copy of the foregoing document was hand delivered to the following:

David Silberman, Esquire
Office of the General Counsel
Federal Communications Commission
1919 M Street, N.W., Room 614
Washington, D.C. 20554



James A. Kline, IV